

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATT P. JACOBSEN,

Plaintiff,

v.

CLEAR RECON CORP, HSBC BANK
USA N.A., PNH MORTGAGE
CORPORATION,

Defendants.


Case No. 3:15-cv-00504-MMD-VPC

ORDER

On December 4, 2015, Defendant Clear Recon Corp filed a declaration of non-monetary status (dkt. no. 33) pursuant to section 2 of S.B. 239, a Nevada statute that became effective on June 1, 2015 ("Section 2"). S.B. 239, 78th Sess. (Nev. 2015). Plaintiff filed an objection ten days later. (Dkt. no. 34.) Clear Recon asserts that it was named in this lawsuit only in its capacity as a trustee, and not because of any wrongful behavior that it carried out in that role. (Dkt. no. 33 at 2.) Unless a valid objection to the declaration is raised, Section 2 would exempt Clear Recon from participating in this litigation. If, as in this case, an objection is timely filed, Section 2 requires courts to "promptly examine" the declaration and the objection, and to "issue an order as to the validity of the objection." S.B. 239. The statute thus imposes additional procedural burdens on both Plaintiff, whose pleadings must specify the capacity in which Clear Recon is being sued, and this Court, which must promptly determine the validity of Plaintiff's objection. Because the Federal Rules of Civil Procedure would not impose these requirements, the Court is inclined to find that Section 2 conflicts with federal

1 procedural law, and, under the *Erie* doctrine, does not apply here. *Cf. Robinson v. Clear*
2 *Recon Corp.*, No. 2:15-cv-00242, 2015 WL 4163189, at *3 (C.D. Cal. July 9, 2015)
3 (declining, under *Erie*, to adopt a similar California rule because it conflicted with federal
4 procedural law). The Court will, however, entertain supplemental briefing on this issue.
5 The parties have fifteen (15) days to file briefs of no more than ten (10) pages that
6 address whether Section 2 applies to this federal court proceeding in light of the *Erie*
7 doctrine.

8 DATED THIS 29th day of December 2015.

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11 MIRANDA M. DU
12 UNITED STATES DISTRICT JUDGE
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